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Nos 678 -679

In the Superior Court of Pennsylvania

Harrisburg District

MARCH TERM, 1941 No. 37

COMMONWEALTH OF PENNSYLVANIA

vs.

GEORGE E. CRANDALL,

Appellant

BRIEF FOR APPELLANT

Appeal from Sentence of the Quarter Sessions Court of York County, Pennsylvania, as of August Sessions, 1940, No. 42, Refusing Motion for New Trial.

H. EUGENE GARDNER,
Attorney for Appellant.

Keswick Theatre Block,
Glenside, Pa.

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STATEMENT OF QUESTIONS INVOLVED

Is a trial for operating a private nursing home without license in a state court in which the accused is hurried to conviction without regard to his rights under Federal and State Constitutions without due process of law and absolutely void? (Answered in the Negative)

Is a defendant denied due process of law if he has not had proper opportunity to present his evidence and sufficient notice to get his witnesses to the trial and opportunity to secure his own counsel, contrary to Federal and State Constitutions? (Answered in the Negative)

Is a defendant denied the equal protection of the law if, contrary to provisions of Federal and State constitutions he is not properly informed of the nature and cause of crime with which he is charged, is not given an opportunity upon arraignment to plead guilty or not guilty, is denied the right to be heard by his own counsel, is denied a subpoena to compel the attendance of witnesses in his behalf, is denied a proper opportunity to present his evidence, and is denied notice and opportunity to present his evidence? (Answered in the Negative)

Was the defendant deprived of his rights and privileges as a citizen of the United States by refusal of continuance to afford more notice and opportunity to defend himself, by refusal of defendant's motion for new trial, and by sentence from which defendant appeals? (Answered in the Negative)

Was the defendant prejudiced by refusal of the Court below to enlarge and correct an incomplete and incorrect record? (Answered in the Negative)

HISTORY OF THE CASE

On August 30, 1940, a jury found the defendant, George E. Crandall, guilty of operating a private nursing home without license. This was the conclusion of a trial on said charge in the Quarter Sessions Court of York County, Pennsylvania, as of August Sessions, 1940, No. 42,—a trial which followed by two days the finding of a true bill against the defendant; a trial one day after the defendant first learned of the indictment against him; a trial for which the defendant was not provided with subpoena to compel the appearance of witnesses and the production of evidence in his behalf; a trial in which the defendant was denied his right under the Constitution of Pennsylvania to be heard by counsel; a trial in which the defendant was not informed by arraignment of the charge against him and not accorded the privilege of pleading guilty or not guilty; a trial in which the defendant was hurried to conviction without regard to his rights, thus denying him the process of the law; a trial in which the defendant had neither sufficient notice nor opportunity to marshal his witnesses and evidence; a trial in which the defendant not only was denied due process of law but also the equal protection of the law, all contrary to provisions of the Federal and State Constitutions, and in which evidence in his favor was erroneously excluded and evidence against him improperly admitted, largely because he was forced to trial without counsel, and in which an opportunity to correct and enlarge by amendment an erroneous and incomplete record was denied.

A motion for new trial has been denied, an opportunity to correct and complete the record by amendment denied, and an appeal taken from the sentence of the Court below (Hon. Walter I. Anderson, J.) imposing a fine of one thousand dollars and costs of prosecution.

ASSIGNMENTS OF ERROR

1. The learned Court below erred in making the following order (169a):

> "And now, to wit, December 30, 1940, defendant's motion for a new trial is overruled and dismissed and defendant is directed to appear before the Court for sentence on January 6, 1941, at 10:00 o'clock a. m.
>
> By the Court,
> Walter I. Anderson, *Judge.*"

2. The learned Court below erred in not granting defendant's request for a continuance on August 29, 1940, to afford defendant sufficient time, notice and opportunity to secure his counsel, evidence and witnesses, and in forcing the defendant to trial without these and without process on August 30, 1940, after indictment on August 28, 1940, of which he had no notice until August 29, 1940.

3. The learned Court below erred in concluding that defendant's right to demand the nature and cause of the accusations against him and to plead guilty or not guilty thereto under Section 9, Article I, of the Constitution of Pennsylvania had been abolished by statute, as follows (167a):

> "It is difficult to see why defendant objects to the fact that he was not formally arraigned

as it has long been established by statute that formal arraignment has been abolished even in cases of felonies except in murder cases. Act of May 15, 1895, P. L. 71, Commonwealth vs. Ferguson, 44 Super. 626."

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4. The learned Court below erred in denying the defendant the right to be heard by his counsel as provided for under Section 9, Article I of the Constitution of Pennsylvania.

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5. The learned Court below erred in not finding that the defendant is a citizen of the United States and a resident of the Commonwealth of Pennsylvania, and that the trial of him without process, counsel, evidence and witnesses necessary to a fair defense, and which he did not have sufficient time, notice and opportunity to produce in his behalf, and the refusal of a new trial on that account, amounted to a deprivation of his rights and privileges, and a denial of the equal protection of the law, and a taking of his liberty and property contrary to the provisions of Amendment XIV to the Constitution of the United States of America.

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6. The learned Court below erred in not permitting, on petition, correction and enlargement of the record so as to include therein a full, true and complete picture of all the facts and circumstances in the case on which defendant bases his contention that he did not receive a fair and just trial and his further contention that he has suffered and

still suffers denials and deprivations of rights guaranteed by the Constitution of the Commonwealth of Pennsylvania and of the United States of America. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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7. The learned Court below erred in not permitting, on petition, correction of the record so as to remove therefrom various errors and falsifications of the record injurious to the defendant. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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8. The learned Court below erred in not permitting, on petition, enlargement of the record so as to include therein evidence admitted at the trial but

which does not appear in the record and without which the record is incomplete. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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9. The learned Court below erred in the exclusion of evidence offered by the defendant and in the admission of evidence offered against him, which he, with his counsel, would have taken proper objection and exception to.

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10. The learned Court below erred in not adequately charging the jury as to the defendant's rights to diagnose and treat disease as an osteopathic physician, licensed by the Commonwealth of Pennsylvania, and his right to practice medicine and/or surgery, and his right to use the degree M. D. obtained from a chartered school granting such degrees and his right to practice medicine and/or surgery in its broad sense as evidenced by certificates of the Commonwealth of Pennsylvania. The charge of the Court, enclosed in brackets, is printed on pages 147a-157a, inclusive.

11. The learned Court below erred in not granting the defendant a severance in the trial of this case and the other case tried with it.

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12. The learned Court below erred in imposing the following sentence or in sentencing the above defendant as follows (177a):

> "January 18, 1941. The Court, Honorable Walter I. Anderson, Judge, sentence the defendant, George E. Crandall, to pay a fine of one thousand ($1,000.00) dollars to the Commonwealth of Pennsylvania for the uses prescribed by law, pay the costs of prosecution and stand committed until this sentence is complied with."

ARGUMENT

An examination of the docket entries in this case discloses that the defendant was indicted on August 28, 1940. He first learned of the indictment on August 29, 1940, at 9:30 a. m., at which time he was informed that he would be going on trial at 10 a. m. on that same morning. The trial judge allowed him one day's postponement of the trial, and he was forced to trial on August 30, 1940, without witnesses, without subpoena, without counsel, and without sufficient notice and opportunity to marshal his witnesses and evidence for a proper defense of his case.

The docket entries further show that the defendant was arraigned on August 30, 1940, and that he pled not guilty. This entry in the Court records is a falsification of the facts. The defendant has witnesses to prove that he was not arraigned and that he did not plead not guilty. He endeavored by petition to enlarge and correct the record to make the record in the case true and complete, but his petition was denied and the case now comes to the Superior Court on a false and incomplete record.

In **Commonwealth vs. Ferguson**, 44 Superior 626, the Superior Court of Pennsylvania decided that in the absence of anything to show the contrary, it is presumed that the plea was entered in open court, as the docket entries plainly show, and that the defendant was present in court when the sentence was imposed. This would indicate that a defendant should be given an opportunity to show that things

were other than they appear by the record, but in the present case the defendant was denied this opportunity, notwithstanding said Superior Court decision.

The defendant further takes the position that he was not required to plead orally or by writing endorsed on the indictment as required by Section 1, Act No. 51, of May 15, 1895, P. L. 71, and that he was denied an opportunity to show all this by refusal of his petition to enlarge and correct the record.

The defendant further takes the position that said Act of May 15, 1895, P. L. 71, could not deprive him of his right to be arraigned guaranteed by Section 9 of Article I of the Constitution of the Commonwealth of Pennsylvania which reads in part: "In all criminal prosecutions, the accused hath a right to be heard by himself *and his counsel to demand* the nature and cause of the accusation against him, * * * to *have compulsory process* for obtaining witnesses in his favor * * * ". The refusal of defendant's petition to enlarge and correct the record denied him opportunity to show that he was not allowed sufficient notice to secure his own counsel so as to be heard by his counsel, and denied him opportunity to show that he was not allowed to demand the nature and cause of the accusation against him, and denied him the right to have compulsory process for obtaining witnesses in his favor. As to these rights under Section 9, Article I, of the Pennsylvania Constitution see the case of *Stewart vs. Commonwealth*, 117 Pa. 378.

Without counsel, witnesses, subpoenas, notice and opportunity, the defendant was hurried to conviction without regard to his rights. In the case of

Moore vs. Dempsey, 261 U. S. 86, the Supreme Court of the United States has held that a trial in a state court in which the accused is hurried to conviction without regard to his rights is without due process of law and absolutely void.

And in the case of **Saunders vs. Shaw,** (La. 1917) 244 U. S. 317, the Supreme Court of the United States decided that where a case has been decided by a state court in such a way that a party has not had proper opportunity to present his evidence, he has been denied due process.

And in the case of **Simon v. Craft,** 182 U. S. 436, the Supreme Court of the United States decided that the essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied the courts are governed by the substance of things and not by mere form.

There shall be a regular course of proceedings, in which notice is given of the claim asserted, and an opportunity to defend against it. See cases in footnote 281, U. S. C. A., Amendment XIV, Section 1, of the U. S. Constitution.

The defendant in this case was not given the usual notice and opportunity, nor did he receive the benefit of such court machinery as counsel, subpoenas, witnesses, evidence and so forth. All these he was denied, where others in like circumstances have the benefit of them. Certainly this is a denial not only of due process but also of the equal protection of the law.

As to when equal protection of the law is denied see the cases of *Minneapolis etc. R. Co. vs. Beckwith,*

129 U. S. 29; *Walston vs. Nevin,* 128 U. S. 582; *In re Grice,* 169 U. S. 284; and the cases in footnote 16 to Amendment XIV, Section 1, to the Constitution of the United States in U. S. C. A., page 297.

Without his counsel the defendant was not advised as to how to secure subpoenas, how to get his witnesses and evidence, how to object to evidence improperly offered and admitted against him, his rights to refuse to testify against himself, and his right to have evidence admitted for him which was erroneously excluded, and how to ask for a severance of the two cases wrongly tried together.

If the defendant had had sufficient notice and opportunity to marshal his counsel, subpoenas, witnesses and evidence he would have been able to show by competent witnesses and evidence that the institution operated by the corporation of which he is President, Dr. Crandall's Health School, Inc., a Pennsylvania corporation, has none of the earmarks of a hospital or private nursing home and therefore could not be one and he could not therefore be guilty of operating one without a license, even if he had operated it, whatever it was. But on top of that it could have been shown, had there been opportunity to do so, that the place was operated as a school to instruct in ways of living to preserve one's health by a corporation organized under the laws of the State of Pennsylvania for the purpose stated, and not by an individual as a hospital or private nursing home.

The record in the case does not disclose that the defendant operated the place involved either as a hospital or as a private nursing home. And even if it did, a new trial certainly should have been

granted because the defendant was not given an opportunity to rebut such contention with the assistance of counsel, witnesses and evidence. Therefore the case should at least be returned to the Quarter Sessions Court of York County, Pennsylvania, for a new trial.

Respectfully submitted,
H. Eugene Gardner,
Attorney for Appellant.

I hereby certify that cases herein cited from other than the Official Reports of the Supreme and Superior Courts of Pennsylvania, are not reported therein.

H. Eugene Gardner,
Attorney for Appellant.